

FCC MAIL SECTION

Federal Communications Commission

DA 00-620

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Sprint Communications Company, L.P.)	
Petition for Waiver)	
)	

ORDER**Adopted:** March 17, 2000**Released:** March 17, 2000

By the Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules² applicable to carriers changing a consumer's preferred carrier. In this Order, we grant to Sprint Communications Company L.P. (Sprint) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*. We grant this limited waiver to the extent necessary to enable Sprint to transfer to Sprint's customer base certain customers currently presubscribed to GTE Communications Corporation, d/b/a GTE Long Distance (GTE-LD), without first obtaining such subscribers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

² 47 C.F.R. §§ 64.1100 - 64.1190.

Federal Communications Commission

service except in accordance with such procedures as the Commission shall prescribe."³ The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁴ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁵

3. Sprint seeks a waiver of our verification rules to allow it to be designated the preferred long distance carrier for GTE-LD's affected customers. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Sprint's petition subject to the conditions represented in its filing.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁶ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹⁰ We find that Sprint has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Sprint to transfer to its own customer base the affected GTE-LD customers.

5. In its petition for waiver filed on February 16, 2000, Sprint states that, in anticipation of

³ 47 U.S.C. § 258.

⁴ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁵ Pursuant to these new procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁶ 47 C.F.R. § 1.3.

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*Wait Radio*).

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁹ *WAIT Radio*, 418 F.2d at 1157.

¹⁰ *Id.* at 1159.

GTE's proposed merger with Bell Atlantic Corporation, GTE-LD intends to cease its provision of interexchange services to its customers in the Bell Atlantic region, except in New York and the District of Columbia. On or about March 24, 2000, GTE-LD will furnish to Sprint the list of the affected GTE-LD customers who did not select another long distance carrier so that they can be transferred to Sprint's customer base. Sprint explains in its petition that is impossible for it to obtain the authorization and verification of each of the estimated hundreds of thousands of affected customers between March 24, 2000 and March 30, 2000, before converting them to Sprint.

6. On or about February 24, 2000, GTE-LD notified its affected customers of GTE's pending merger with Bell Atlantic and of its plans to cease providing interexchange services to those customers on March 30, 2000.¹¹ The letter informed affected customers that they were free to choose another carrier, and that if they did not select another carrier by March 20, 2000, arrangements had been made for Sprint to become their long distance carrier. The letter explained that this arrangement would ensure uninterrupted long distance service to the customers affected by the transfer to Sprint. GTE also attached a coupon to the letter that would pay for any preferred carrier change charge assessed to the customer for switching to a new carrier or for being switched to Sprint.

7. We note that, when considering past requests for waiver of the Commission's carrier change authorization and verification rules, we have viewed favorably those situations in which a carrier certifies that it will undertake a two-step customer notification process, with customer notification taking place both before and after the conversion occurs. Ideally, the first step in such notification should occur after the Commission has had an opportunity to make a determination regarding the carrier's request for waiver to ensure that the notification is sufficient to justify a waiver of the Commission's subscriber authorization and verification rules. In this instance, GTE notified its customers of the transfer to Sprint prior to a decision on the merits of this waiver request. We strongly discourage this practice and expect that carriers seeking a waiver of the Commission's subscriber authorization and verification rules should permit the Commission to consider the merits of the waiver request prior to the transfer of the customer base.

8. In the interest of protecting the affected customers from any possible disruption in service and because Sprint has indicated its intent to notify customers as described below, we conclude that a waiver of the authorization and verification rules is in the public interest. Sprint states that it will send a second notification letter to the affected customers informing them that: 1) as a result of the transfer, they are now Sprint customers, but that they may switch to another provider at any time; 2) as customers of Sprint, they will receive the same or better rates, terms, and conditions that they had as customers of GTE-LD; 3) customers should return the GTE-LD coupon to pay for the cost of being switched to Sprint; and 4) customers may call a toll-free number with any questions they may have regarding their conversion to Sprint.¹²

¹¹ Sprint included with its February 16, 2000 waiver petition a draft of the notification letter that GTE-LD proposed to send to the affected customers. On March 16, 2000, Sprint confirmed that GTE-LD did, in fact, send the proposed letter to GTE-LD's residential customers on February 24 and 25, and to its small business customers on February 28, 2000.

¹² Because GTE-LD will continue business in areas outside of the Bell Atlantic region and will remit bills for services rendered to the affected customers prior to March 30, 2000, we agree with Sprint that GTE is in the best position to resolve any customer complaints regarding that service. Sprint will, however, cooperate with GTE in that endeavor.

Federal Communications Commission

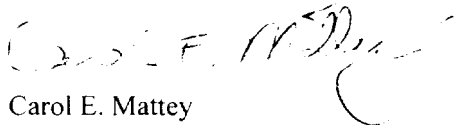
9. Moreover, absent a waiver of the Commission's rules, the affected customers would be unable to place "1+" interexchange calls as of March 30, 2000. As a result, such customers may be forced to use dial-around services, which may be more expensive than the services they now receive from GTE-LD and would receive from Sprint after the conversion. While we find a waiver is appropriate in this case to protect these customers from any disruption in service, in the future we expect carriers to allow the Commission sufficient opportunity to consider the merits of the waiver request prior to the transfer of the customer base.

10. For the foregoing reasons, we grant Sprint's waiver request for the limited purposes described above. We find that, under the circumstances presented, it is in the public interest to permit Sprint to become the preferred carrier of the affected GTE-LD customers, without first obtaining each customer's express authorization and verifying such authorization in accordance with the Commission's carrier change requirements. The grant of this waiver is conditioned upon Sprint's provision of the customer notification and complaint resolution services described above and further detailed in its petition.

III. ORDERING CLAUSES

11. Accordingly, pursuant to authority contained in sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the waiver request filed by Sprint Communications Company L.P. on February 16, 2000, and supplemented on March 16, 2000, IS GRANTED to the extent indicated herein.

12. IT IS FURTHER ORDERED that this Order is effective upon its release.


Carol E. Matthey
Deputy Chief, Common Carrier Bureau